

WO

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Paul Thorid Agneberg, *ex rel.* Steven
Lee McMillan,

Petitioner,

v.

David Rhodes,

Respondent.

No. CV-23-08556-PCT-JAT (JFM)

ORDER

On September 20, 2023, Steven Lee McMillan (“Declarant”) filed a Declaration (Doc. 1), purportedly on behalf of Paul Thorid Agneberg, whom Declarant alleges was improperly or unconstitutionally detained following a municipal court proceeding and is, or was, unable to file a petition for writ of habeas corpus on his own behalf.¹

I. Declaration

Declarant purports to seek relief concerning Mr. Agneberg’s detention following municipal court proceedings. It appears that Mr. Agneberg is currently being detained pending criminal charges that were filed against him in Yavapai County Superior Court.² Declarant identifies the Respondent as Yavapai County Sheriff David Rhodes. He appears

¹ Although this case is not identified, Declarant appears to be referring to Sedona municipal court case# M-0346-CT-2023001499, which involved several criminal traffic offenses. See <https://apps.supremecourt.az.gov/publicaccess/caselookup.aspx>, Search First Name Paul Last Name Agneberg (last accessed Mar. 15, 2024).

² See <https://apps.supremecourt.az.gov/publicaccess/minutes.aspx> [https://perma.cc/5Z4N-KMDC].

1 to contend that Sedona Magistrate Schlegel violated Rule 32.2 of the Arizona Rules of
 2 Criminal Procedure when he fined Mr. Agneberg \$1,900, sentenced him to 10 days in jail,
 3 and ordered that he be arrested without first affording Agneberg an opportunity to appeal
 4 the fine and sentence. In addition, Declarant asserts that Mr. Agneberg's conditions of
 5 confinement violated Mr. Agneberg's constitutional rights.

6 **II. Declarant Lacks Standing to Appear for Mr. Agneberg**

7 Mr. McMillan filed this case on behalf of Mr. Agneberg. While a non-attorney may
 8 represent himself, he has no authority to appear as an attorney for another. *C.E. Pope*
 9 *Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987). In rare circumstances, a
 10 third party may, *through counsel*, seek habeas corpus relief on behalf of someone else as a
 11 "next friend." Declarant has failed to make an adequate showing to act as next friend on
 12 Mr. Agneberg's behalf. "[N]ext friend' standing is by no means granted automatically to
 13 whomever seeks to pursue an action on behalf of another." *Whitmore v. Arkansas*, 495
 14 U.S. 149, 163 (1990). In habeas corpus cases there are at least two prerequisites for "next
 15 friend" standing. *Id.* The first is that the "next friend' must present an adequate
 16 explanation—such as inaccessibility, mental incompetence, or other disability—why the real
 17 party in interest cannot appear on his own behalf to prosecute the action." *Id.* (citations
 18 omitted). The second is that the "next friend' must be truly dedicated to the best interests
 19 of the person on whose behalf he seeks to litigate" and that the "next friend" have some
 20 significant relationship with the real party in interest. *Id.* "The burden is on the 'next
 21 friend' clearly to establish the propriety of his status and thereby justify the jurisdiction of
 22 the court." *Id.* at 164.

23 Declarant asserts that Mr. Agneberg is unable to appear on his own behalf merely
 24 because he is in jail and is or was held in solitary confinement. Declarant has neither
 25 explained why Mr. Agneberg is unable to seek habeas corpus on his own behalf as many
 26 detainees have, nor alleged any facts showing both a significant relationship with Agnberg
 27 and a sincere dedication to Agneberg's best interests. Accordingly, the Court concludes
 28 that Mr. McMillan lacks standing to bring a habeas corpus action on behalf of Mr.

1 Agneberg. The Declaration will be dismissed to the extent that any relief is sought, and
2 this case will be dismissed.

3 **IT IS ORDERED:**

4 (1) The Clerk of Court must modify the docket for this case to reflect that it was
5 filed by Mr. McMillan on behalf of Mr. Agneberg.

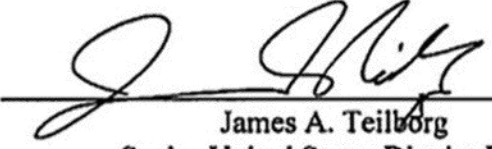
6 (2) The Declaration, docketed as a habeas petition, (Doc. 1) is **denied** to the
7 extent that any relief is sought, and this action is **dismissed** without prejudice.

8 (3) The Clerk of Court must enter judgment accordingly and close this case.

9 (3) Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, in the
10 event Petitioner files an appeal, the Court declines to issue a certificate of appealability
11 because reasonable jurists would not find the Court's procedural ruling debatable. *See*
12 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

13 Dated this 26th day of March, 2024.

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



James A. Teilborg
Senior United States District Judge